



12-20-04

JFW

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

5

Application Number

10/738,386

Filing Date

12/17/2003

First Named Inventor

Michael D. Blenkam

Art Unit

3765

Examiner Name

Gloria M. Hale

Attorney Docket Number

SIM03-0001

ENCLOSURES (Check all that apply)

Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Reply to Missing Parts/
Incomplete ApplicationReply to Missing Parts
under 37 CFR 1.52 or 1.53

Drawing(s)



Licensing-related Papers



Petition

Petition to Convert to a
Provisional ApplicationPower of Attorney, Revocation
Change of Correspondence Address

Terminal Disclaimer



Request for Refund



CD, Number of CD(s) _____

☐ Landscape Table on CD

Remarks



After Allowance Communication to TC

Appeal Communication to Board
of Appeals and InterferencesAppeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please identify
below):**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name

Antoinette M. Tease, P.L.L.C.

Signature

Printed name

Antoinette M. Tease

Date

12/17/2004

Reg. No.

53680

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as indicated in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature

Typed or printed name

Antoinette M. Tease

Date

12/17/2004

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/738,386
Filing Date: December 17, 2003
Applicant: Michael D. Blenkarn
Title: Pre-Curved Wader With Front and Back Seams
Examiner/GAU: Gloria Hale/3765

AMENDMENT AND RESPONSE
TO NON-FINAL OFFICE ACTION

The Honorable Commissioner for Patents
Washington, District of Columbia 20231

Dear Sir:

Please amend the above application as follows:

Specification:

Please replace the Abstract of the Disclosure with the following:

A wader that is shaped to allow for ease of movement in the hip and knee areas and that has seams running vertically on the anterior and posterior sides of the leg portions. The wader is designed to alleviate discomfort caused by stiff seams and to address the problem of seam abrasion. The wader is made of breathable fabric, and the seams are sewn and sealed. The wader can include, optionally, a foot-covering device and a cinching device. In the preferred embodiment, the seams are sealed with a thermoplastic adhesive tape. A method of manufacturing the wader described above.

REMARKS

The Abstract of Disclosure has been amended to remove the word "means."

In response to the examiner's rejection of claims 1–6 and 8–11, the applicant respectfully points out that the invention covered by the Dehner patent (U.S. Patent No. 6,154,884) is an entirely different type of wader than the wader covered by the present invention. The Dehner patent involves a wader that is *non-breathable* below the knee (see column 3, lines 35–36). The present invention, on the other hand, relates solely to a *breathable* wader (see claim 1). In the case of a breathable wader, the wader is typically made of a breathable fabric like Gore-Tex®. In the case of a non-breathable wader, the wader is typically made of neoprene. Breathable and non-breathable waders are fundamentally different in terms of comfort, feel, function and the manufacturing process. The patent office recognized this difference in allowing separate patents for breathable and non-breathable versions of the same wader in the following two patents: U.S. Patent Nos. 6,438,757 entitled “Waterproof Relief Outlet in Breathable Wader” and 6,363,531 entitled “Waterproof Relief Outlet in Wader.” These two patents are identical except that one deals with a breathable wader, and the other deals with a non-breathable wader.

Furthermore, the non-breathable portion of the Dehner wader with the front and back seams is made of a woven nylon supplemented with an inner polyurethane coating (see column 3, lines 47–48), and the seams are heat-sealed (see column 3, line 36). Dehner does not disclose the particular method of heat sealing he used, although he does say that the seams are *not* sewn and sealed, as with breathable fabrics (see column 2, lines 31–32). In this context, the term “heat sealing” most likely means radiofrequency welded, as in the Red Ball wader disclosed in the applicant's patent application (see page 4). In fact, the Dehner patent teaches away from using sewn and sealed seams on a

breathable fabric in connection with front and back seams. Dehner states, “Furthermore, in the preferred design, the lower non-breathable section of the wader may be heat-sealed, thereby eliminating the expense associated with stitching and sealing of breathable materials.” See column 2, lines 31–32.

The examiner has also stated that the Dehner wader “has a pre-curved hip and knee portion.” The examiner has not provided any citation to the Dehner wader in support of this assertion, however, and the applicant cannot find any reference in the Dehner patent to pre-curving of the leg or hip areas of the wader. In fact, the drawings in the Dehner patent do not show any pre-curving at all (see Figure 1). By contrast, the drawings in the present application clearly show the pre-curving in the knee and hip area, which is an important aspect of the present invention (see Figures 3 and 4) and is based on patterns that are cut specifically to provide this type of curving. In the applicant’s view, the Dehner design is inferior because it will cause wear at the point where the inseam joins the non-breathable leg portion. Unlike the Dehner wader, the wader of the present invention is designed to eliminate inseam wear points.

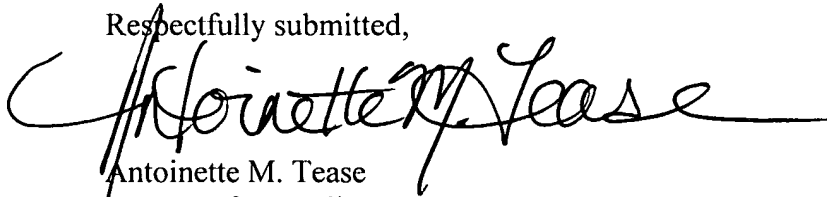
The examiner noted that Dehner disclosed an adhesive tape sealing means; however, in the Dehner patent, the adhesive tape sealing means is used to seal the upper, breathable portion of the wader (which does *not* have front and back seams) with the lower, non-breathable portion of the wader (which does have front and back seams) (see column 4, lines 12–19). The adhesive tape sealing means is not used to seal the front and back seams on the non-breathable leg portions of the wader. In fact, Dehner states that “the heat sealed joints in the legs do not require seam tape” (column 4, lines 18–19). By

contrast, in the present invention, the front and back seams on the leg portions of the wader are preferably sealed with a thermoplastic adhesive tape.

Lastly, the examiner also mentioned the cinching device. The cinching device of the present invention is something that goes around the wearer's waist. See page 6 of the applicant's patent application, where it states that the wader can include "a belt, drawstring, or similar cinching device 5 at the waist region." This is depicted in Figures 1-4 (see reference number 5). The Dehner wader does not have any cinching device at the waist. It has suspenders (see references number 68 in Figure 1 and column 4, line 20), but it does not have a cinching device as that term is used in the present application.

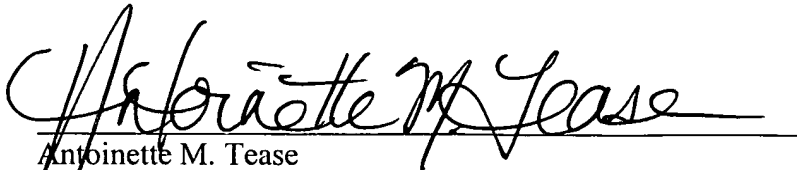
For the reasons set forth above, the applicant respectfully requests that the rejection of claims 1-6 and 8-11 be withdrawn.

Respectfully submitted,



Antoinette M. Tease
Attorney for Applicant
PO Box 51016
Billings, MT 59105
(406) 245-5254
Registration No. 53860

Certificate of Mailing: I certify that on the date below this document and referenced attachments, if any, were deposited with the U.S. Postal Service as Express Mail in an envelope addressed to: "U.S. Patent and Trademark Office, Mail Stop Amendment, PO Box 1450, Alexandria, VA 22313-1450."



Antoinette M. Tease
December 17, 2004